

Appeal from a decision of the Folsom Resource Area Manager, Bureau of Land Management, California, issuing right-of-way CACA 38029.

Dismissed.

1. Administrative Procedure: Generally--Administrative Procedure: Standing

In order to have standing to appeal, an appellant must be both a "party to the case" and have a legally cognizable interest that is "adversely affected" by BLM's decision. Where the record shows that the appellant is the holder of a road right-of-way over which BLM granted another right-of-way to a secondary user, the appellant has a legally cognizable interest. However, where the appellant's right-of-way has not been encroached upon by BLM's grant of a secondary right-of-way, the appellant has not been adversely affected and the appeal is subject to dismissal.

APPEARANCES: Patrick Reeves, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Patrick Reeves has appealed a decision dated June 4, 1997, by the Folsom Resource Area Manager, Bureau of Land Management (BLM), California, issuing right-of-way CACA 38029 to William DeGarmo. This right-of-way (ROW) is for constructing, operating, and maintaining a 300-foot long access road on public lands in Lot 1, sec. 20, T. 1 S., R. 16 E., Mount Diablo Meridian, Tuolumne County, California.

On November 13, 1987, BLM granted to Patrick Reeves and Jeriel Reeves ROW CA 20532, for construction of the same road. According to a May 7, 1997, memorandum in the record, the Reeves were owners of a 40-acre parcel known as the Mount Jefferson Mine. The Reeves separated and lost title to the property through a deed in lieu of foreclosure executed in favor of DeGarmo. Intending to sell the property, DeGarmo attempted to secure legal access by obtaining an assignment of the Reeves' ROW. Failing to obtain an assignment, he applied for, and was granted, his own ROW from BLM.

In his appeal, Patrick Reeves suggests that BLM could only grant ROW's to multiple users where the road would provide access to multiple parcels. Here, Reeves asserts, there is only one parcel. Reeves states that this parcel "was recently taken over by an investor." Reeves has submitted documents indicating that he has filed a lawsuit in the Superior Court of California alleging bad faith, conspiracy, and fraud against DeGarmo.

[1] There is nothing in the statute or the regulations prohibiting secondary use of a particular ROW site. See 43 C.F.R. § 2801.1-1(a)(2). Indeed, the Reeves' ROW grant (CA 20532) states as one of its terms and conditions that "[t]here is reserved to the authorized officer, the right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant." In granting the ROW to DeGarmo, BLM exercised this prerogative. In turn, DeGarmo's grant (CACA 38029) "is subject to all valid existing rights." The Reeves' rights in their ROW have not been abridged or encroached upon. Accordingly, they have suffered no adverse effects.

In order to have standing to appeal, an appellant must be both a "party to the case" and have a legally cognizable interest that is "adversely affected" by BLM's decision. 43 C.F.R. § 4.410(a). Since the Reeves have a ROW over the same road as DeGarmo, they have a cognizable interest. However, that interest is not adversely affected by BLM's decision granting DeGarmo's ROW. Therefore, the appeal will be dismissed for lack of standing to appeal. Mark Einsele, 147 IBLA 1, 6 (1998); Burton A. McGregor, 119 IBLA 95, 98-99 (1991); Phelps Dodge Corp., 72 IBLA 226, 228 (1983); In Re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed.

Will A. Irwin
Administrative Judge

I concur:

T. Britt Price
Administrative Judge